Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO *and* Owren Kirklin & Sons, Inc. and Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO. Case 25–CD–216

May 13, 1982

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Owren Kirklin & Sons, Inc., herein called the Employer, alleging that Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, herein called the Ironworkers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL–CIO, herein called the Carpenters.

Pursuant to notice, a hearing was held before Hearing Officer Frederick G. Winkler on November 5, 1981. The Employer, the Ironworkers, and the Carpenters appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer, the Ironworkers, and the Carpenters filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

We find that the Employer, an Indiana corporation with its principal offices located in Muncie, Indiana, is engaged in the construction of commercial and industrial facilities as well as in the setting, moving, and aligning of equipment in industrial plants. During the past year the Employer purchased goods from suppliers located outside the State of Indiana in excess of $50,000. Accordingly, we find that the Employer is an employer within the meaning of Section 2(2) of the Act. We further find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that the Ironworkers and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The disputed work involves the construction and erection of pre-engineered metal buildings at the Cabot Corporation jobsite in Kokomo, Indiana.

B. *Background and Facts of the Dispute*

The Employer has contracted with the Cabot Corporation to erect two pre-engineered metal buildings which are to be attached to a preexisting building at the Cabot facility in Kokomo, Indiana. The erection of pre-engineered metal buildings is comparable on a grand scale to working with a toy erector set. The building plans show, by number designation, how the prefabricated components fit together as well as their location on the foundation or footings. The different components are fastened to each other or to the foundation by nuts and bolts or screws. Generally, welding is not required.

Although the Employer has erected many pre-engineered metal buildings in the State of Indiana, it has never erected one within the Ironworkers jurisdiction. With the exception of part of one building which was constructed by employees represented by a different Ironworkers local, the Employer has not erected a pre-engineered metal building with employees represented by any Ironworkers local; it has used only employees represented by other Carpenters locals. Pursuant to a general collective-bargaining agreement as well as a specialty agreement which specifically mandates that pre-engineered metal buildings be erected by employees represented by the Carpenters, the Employer assigned the work of erecting the buildings at the Cabot jobsite to employees represented by the Carpenters. The Ironworkers claimed this work and threatened to picket the jobsite if the Employer did not assign the work to employees represented by the Ironworkers.

C. *The Contentions of the Parties*

The Employer contends that a jurisdictional dispute exists and that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. It further contends that the disputed work should be awarded to employees represented by the Carpenters on the basis of its collective-bargaining agreement and specialty agreement with the Carpenters, its assignment of the work, its past practice, economy and efficiency, and the relative skills of the craft groups involved. The Carpenters agrees with the Employer that a jurisdictional dispute exists and that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. In addition, it agrees that the work should be assigned to employees it represents for essentially the same reasons asserted by the Employer except that it claims that industry practice supports the assignment of work to employees represented by the Carpenters.

The Ironworkers also agrees that a jurisdictional dispute exists and that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. However, it contends that employees represented by it should be awarded the work by virtue of an interunion agreement between the parent organizations of the Ironworkers and the Carpenters, respectively, to which the Employer is bound by a provision in its agreement with the Ironworkers, and on the basis of relative skills, area and industry practice, and trade jurisdiction and substitution of functions.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated, and that there is no agreed-upon method for the voluntary adjustment of the dispute.

The threshold standard of "reasonable cause to believe" does not require the same degree of proof as is necessary to establish the actual commission of an unfair labor practice in violation of Section 8(b)(4)(D).[1] It is uncontested that the Ironworkers threatened to picket the Employer and the Cabot Corporation with the object of forcing the Employer to assign the work to employees represented by the Ironworkers rather than to employees represented by the Carpenters. Therefore, we find there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated.

Although the Ironworkers claims that an interunion agreement controls the merits of the dispute herein, it does not contend that an agreed-upon method exists for its voluntary adjustment. Accordingly, we find that this dispute is appropriate for resolution by the Board under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[2] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[3] The following factors are relevant in making the determination of the dispute before us:

1. Certification and collective-bargaining agreements

Neither of the Unions involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees. The Employer has collective-bargaining agreements with both the Ironworkers and the Carpenters. The pertinent language of the Employer's current contract with the Ironworkers reads as follows:

> ARTICLE II
>
> CRAFT JURISDICTION:
>
> It is agreed that jurisdiction of work covered by the Agreement is that provided for in the Charter Grant issued by the American Federation of Labor to the International Association of Bridge, Structural and Ornamental Ironworkers, it being understood that the claims are subject to trade agreements and final decisions of the AFL-CIO as well as the decisions rendered by the National Labor Relations Board.

Recognizing that the foregoing language does not explicitly refer to pre-engineered metal buildings, the Ironworkers relies on the reference to trade agreements. The Ironworkers and the Carpenters are affiliated with, respectively, the International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, and the United Brother-

[1] *Southern California Pipe Trades District Council No. 168; Plumbers & Steamfitters Local No. 582 (Kimstock Division, Tridair Industries, Inc.)*, 198 NLRB 1240 (1972).

[2] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[3] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

hood of Carpenters and Joiners of America, AFL-CIO. These two parent organizations have a "trade agreement" which defines the jurisdiction of the two trades. One section of the "Stran Steel" article provides:

> On Rigid Frame Buildings, the Ironworkers shall erect the structural steel members (columns, trusses, purlines, or girts when structural members) and the exterior metal sheeting or metal paneling. The Carpenters shall erect any nailable stran-steel members.

Since the uncontroverted evidence establishes that the buildings in dispute are "rigid frame" type buildings, the Ironworkers contends that the foregoing provision in the trade agreement requires the Employer, who was not a party to that agreement, to assign the work to employees represented by it.

The Board has considered the applicability of the same section of this trade agreement to similar work in *Local 361, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (Concrete Casting Corp.)*, 209 NLRB 112 (1974). In that case we noted that the agreement would be ambiguous if it were true that structural steel members of rigid frame buildings were nailable. According to the Employer's uncontroverted testimony, nailable stran-steel members are, indeed, components of pre-engineered buildings. Therefore, as in *Local 361, Iron Workers, supra*, it is unclear here whether the trade agreement applies to the work in dispute.

Even if we found no ambiguity in the trade agreement, we would still attach no weight to it because not all parties have agreed to be bound by it. *Id.* Only the Ironworkers has agreed to be bound. The Employer does not agree to be bound by it. While the Carpenters has not explicitly taken a position on the applicability of this agreement, by continuing to claim that its own agreements with the Employer apply, its position is apparent. Therefore, the agreement between the Ironworkers and Carpenters parent organizations does not support the Ironworkers claim that the work should be awarded to employees represented by the Carpenters.

As noted above, the Employer has two agreements with the Carpenters, a general collective-bargaining agreement which, like the Ironworkers agreement cited above, binds the Employer to trade agreements, as well as a specialty agreement. The latter is entitled "Wabash Valley District Council of Carpenters, Pre-Engineered Metal Building Agreement." It provides in pertinent part: "This agreement covers the specialty work of erecting pre-engineered metal buildings." Since the work in dispute is the erection of pre-engineered metal buildings, the specialty agreement clearly supports the Employer's and the Carpenters claim. Indeed, the Ironworkers does not dispute the merits of their claim. However, the Ironworkers contends that the specialty agreement does not cover the work in dispute because it was executed a few days after the Employer executed a contract with the Cabot Corporation for the work in dispute. Since the specialty agreement was executed well before construction of the buildings was to begin, we see no reason why it could not cover the work in dispute. Accordingly, we find that the collective-bargaining agreements between the Employer and the Carpenters favor an award of the work in dispute to employees represented by the Carpenters.

2. Employer practice and preference

At the hearing and in its brief the Employer has expressed its preference that the disputed work be performed by employees represented by the Carpenters. This is consistent with the Employer's past practice, which has been to award the work to employees represented by a different Carpenters local pursuant to a specialty agreement virtually identical to the one executed by the Employer and the Carpenters here. Accordingly, we find that this factor favors an award of the disputed work to employees represented by the Carpenters.

3. Relative skills and training

The parties dispute whether employees represented by the Ironworkers or by the Carpenters possess superior skills and training. From our examination of the record we conclude that the evidence is equivocal. While the record contains evidence that both ironworkers and carpenters have successfully erected many pre-engineered metal buildings, there are difficulties with the evidence each side has adduced. The Carpenters attempted to prove that employees it represents possess greater skills but its evidence was limited to construction outside the jurisdiction of the Ironworkers. The Employer's evidence that employees represented by the Ironworkers are not as skilled was based on a very limited experience with a different Ironworkers local. Similarly, although the Ironworkers presented testimony that employees it represents possess superior skills and training because of their experience with conventional as well as pre-engineered buildings, one of their witnesses testified that erecting pre-engineered buildings requires skills different from those required for conventional buildings because lighter steel is involved. Therefore, the factor of skills and training

does not favor an award of the work in dispute to either group of employees.

4. Area practice

The Employer, the Ironworkers, and the Carpenters all rely on area practice to support their contentions. However, they rely on different areas. The Carpenters and the Employer rely on practice essentially within the State of Indiana, while the Ironworkers relies especially on the Cabot Corporation site but also on practice within the Ironworkers jurisdiction which extends over several counties in central Indiana. Since the evidence is indeterminate, we find that this factor does not support an award of the work in dispute to either group of employees.

5. Economy and efficiency

The Employer claims that it would be more economical and efficient to use employees represented by the Carpenters because only one crew would be required. If the Employer were required to use employees represented by the Ironworkers, a crew of employees reprsented by the Carpenters would still be required for some parts of the buildings. According to the Employer, two crews would necessarily cause coordination problems which would result in inefficiency and greater expense. The Ironworkers presented no evidence to support the Employer's claim. In the absence of specific evidence to support the Employer's argument, however, we find that the evidence is insufficient to support an award of the work to either group of employees.

6. Trade jurisdiction and substitution of functions

A large part of the work traditionally performed by the Ironworkers has involved the erection of metal buildings, albeit conventional structural steel buildings rather than pre-engineered metal buildings. The Board has long recognized the difficulties created by the introduction of a new process when technological changes take place. Accordingly, we have considered the difficulties confronted by the Ironworkers in this case by the introduction of pre-engineered metal buildings. In this case, however, as noted in sections 3 and 5 *infra*, employees represented by both the Ironworkers and the Carpenters have an extensive past practice of performing this kind of work. Accordingly, we find that this factor does not favor an award of the work in dispute to either group of employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees represented by the Carpenters are entitled to perform the work in dispute. We reach this conclusion relying on the following factors: The Employer's past practice and preference, and the current collective-bargaining agreements. In making this determination, we are awarding the disputed work to employees represented by the Carpenters, but not to that Union or its members. Our present determination is limited to the particular dispute which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. The employees of Owren Kirklin & Sons, Inc., who are represented by Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, are entitled to perform the erection of pre-engineered metal buildings at the Cabot Corporation jobsite at Kokomo, Indiana.

2. Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, is not entitled by means of conduct proscribed by Section 8(b)(4)(D) of the Act to force or require to assign the aforementioned work to employees it represents.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, shall notify the Regional Director for Region 25, in writing, whether it will refrain from forcing or requiring Owren Kirklin & Sons, Inc., by means proscribed by Section 8(b)(4)(D) of the Act, to assign the work in dispute to employees represented by Local Union No. 379, International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, rather than to employees represented by the Wabash Valley District Council of Carpenters, United Brotherhood of Carpenters & Joiners of America, AFL-CIO.